IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/09/2002

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.34470 of 2002
and
W.P.M.P.No.51428 of 2002.

K.Balaji .. Petitioner

-Vs-

1.State of Tamil Nadu,
rep. by Secretary,
Home Department,
Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Egmore,
Chennai-8.

3.The State by Inspector of Police,
(L&O), F-2, Egmore Police Station,
Chennai-8. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Mandamus as stated therein.

For Petitioner : Ms.P.Selvi

For Respondents : Mr.D.Krishnakumar,
Spl. Govt. Pleader

:O R D E R
Mr.D.Krishna Kumar, Special Government Pleader, takes notice on behalf of respondents 1 to 3.

2. The petitioner, who is engaged in the business of video game parlour at No.10, Montieth Road, Taj Mahal Complex, Egmore, Chennai-8, placing reliance on the orders of this Court dated 3.4.2001, made in W.P.No.4022 of 2001, permitting lawful video game parlour to run the business and directing the respondents/police not to interfere with the business as long as they run the business in accordance with law and also an order of a Division Bench of this Court dated 11.02.2002, made in Writ Appeal Nos.809 and 810 of 1999, directing the second respondent/police to maintain status quo

with regard to the running of the video game parlour, seeks a writ of Mandamus to forbear the respondents and their subordinates from in any manner interfering with the lawful running of business of video games parlour at No.10, Montieth Road, Taj Mahal Complex, Egmore, Chennai-8.

3. The learned counsel for the petitioner has also brought to my notice that this Court by order dated 12.7.1999, in Writ Petition No.11 881 of 1991, forbore the Commissioner of Police, Madras-8, from interfering with the video game business as long as the video game parlour carry on their business in accordance with law, of course, reserving the right to take appropriate action in a manner known to law as and when the video game parlour commits any irregularity in their business.

4.1 As per the decision of the Apex Court in M.J.Sivani vs. State of Karnataka, reported in AIR 1995 Supreme Court 1770, the video game parlours are required to obtain a licence under Sections 34, 35 and 3 9 of the Madras City Police Act even to run the video games within the space less than 400 sq.ft.

4.2 Even though the counsel for the petitioner would contend that requiring the petitioner to get a licence under Sections 34, 35 and 39 of the Madras City Police Act even in the case of "game skill" is not necessary, I am of the considered opinion that it is an obligation of the Court in applying the test of reasonableness, particularly, when Article 19(6) of the Constitution of India empowers the State to impose any reasonable restriction on the exercise of the right in general public interest. In applying the test of reasonableness, the broad criteria to be applied is whether the law strikes a proper balance between social control on the one hand and the right of the individual on the other hand, as rightly held by the Apex Court in M.J. Sivani's case.

4.3 Therefore, the Court must take into account factors like nature of the right enshrined, underlying the purpose of the restriction imposed, evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the prevailing conditions at that time and the Court cannot proceed on general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or a class of persons on whom the restrictions are imposed.

4.4 It depends on the nature of business and the prevailing conditions in that trade or business, which would differ from trade to trade. No hard and fast rules concerning all trades etc. could be laid. The most important guideline in such matters is that no one has inherent power to carry on a business which is injurious to public interest.

4.5 It is for that reason, the licencing authority is conferred with discretion to impose such restrictions by notification or order

having statutory force or conditions emanating therefrom. Unregulated video game operations not only pose danger to public peace and order and safety, but the public will fall into prey of gaming where they always stand to lose playing in the games of chance. Therefore, when it is a game of pure chance or manipulated by tampering with the machines to make it a game of chance, even acquired skills hardly assist a player to get extra tokens and even when it is a game of mixed skill and chance, it would be a game prohibited under the statute, except by regulation. The restriction imposed, therefore, cannot be said to be arbitrary, unbridled or uncanalised. The regulations are, hence, imposed in the public interest and there is no violation of any right conferred under Article 19(1)(g) and 21 of the Constitution of India.

5. For all these reasons, except to permit the petitioner to obtain proper licence to run video game parlour under Sections 34, 35 and 3 9 of the Madras City Police Act and other relevant law, if any, no further orders are required in the above writ petition and the same is dismissed. No costs. W.P.M.P.No.51428 of 2002 is also dismissed.

Index : Yes
Internet: Yes

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To,

1.The Secretary,
State of Tamil Nadu,
Home Department,]
Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Egmore,
Chennai-8.

3.The State by Inspector of Police,
(L&O), F-2, Egmore Police Station,
Chennai-8.

P.D.DINAKARAN, J.